

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDREW MARK MONTEMAYOR,

Defendant and Appellant.

F056834

(Super. Ct. No. F08902709)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. Houry A. Sanderson, Judge.

Richard Power, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

-ooOoo-

---

\* Before Levy, Acting P.J., Cornell, J. and Kane, J.

In the early morning hours of March 30, 2008, someone fired several gunshots at a home on “M” Street in Reedley. Officers who arrived to investigate spoke to a Sureño gang member who directed them to a house around the corner on 10th street where some Norteño gang members lived. A neighbor told the officer that he had seen someone run toward the residence that the Sureño gang member identified. Later that morning, the officers received permission to search the house on 10th Street and found appellant, Andrew Mark Montemayor, hiding under a bed and three other suspects, including Samuel Mariscal, hiding in a washroom. Mariscal was identified as the person seen running from the scene of the shooting. He was arrested along with Montemayor, who was arrested for an outstanding warrant.

During a police interview, Montemayor stated that he had been hanging out at his aunt’s house on 10th Street when Samuel Mariscal arrived with a .22 caliber rifle. After the two other men went to sleep, Montemayor and Mariscal went to “put in work.” He and Mariscal walked to the corner of “M” and 10th Streets. Mariscal kept walking with the rifle toward the victims’ house and fired a full clip into the house before he and Montemayor ran to his aunt’s house. The men left the rifle in an abandoned tub and went inside to sleep.

On April 29, 2008, the district attorney filed a complaint charging Montemayor with discharging a firearm at an inhabited dwelling (Pen. Code, § 246) and a gang enhancement (Pen. Code, § 186.22, subd. (b)(1)).

On September 17, 2008, the district attorney amended the complaint to add one count of assault with a semiautomatic firearm (count 2/Pen. Code, § 245, subd. (b)) with a personal arming enhancement (Pen. Code, § 12022.5) and a count of street terrorism (count 3/Pen. Code, § 186.22, subd. (a)). Montemayor then pled no contest to these two counts and admitted the enhancement in count 2 in exchange for the dismissal of the remaining count and enhancement and a stipulated 10-year term. Montemayor also

admitted violating grants of probation in Fresno County Superior Court case Nos. F07601572 and F07902668.

On November 24, 2008, the court sentenced Montemayor to an aggregate 10-year term: the middle term of six years on his assault conviction, a middle term of four years on the arming enhancement in that count, a concurrent term on the street terrorism count, a concurrent term on one of the probation violation cases and time served on each of two misdemeanor cases.

Montemayor's appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) Montemayor has not responded to this court's invitation to submit additional briefing.

Following independent review of the record, we find that no reasonably arguable factual or legal issues exist.

The judgment is affirmed.